

Hartman's memo also included his analysis of new materials submitted since January 1995. Those materials included market impact studies submitted by the St. Croix Chippewa and other opponent tribes, recent municipal government resolutions opposing the casino proposal and letters and petitions of support and opposition from various individuals. Hartman analyzed whether each of the anti-casino submissions provided a factual basis for finding that the proposal would be "detrimental to the surrounding community." In the spring of 1995, it was Hartman's understanding of IGMS policy that an objection would be given weight only to the extent that it was factually supported; a mere, unsupported objection – even by a local government – would carry little or no weight.<sup>376</sup>

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<sup>375</sup>(...continued)

scrutiny than was ordered. He believed BIA's duty to promote tribal interests caused its environmental enforcement function to be given low priority. He stated the prevailing view at BIA appeared to be that environmental concerns should not thwart Indian gaming opportunities.

<sup>376</sup>The decision ultimately reached on the Hudson application reflects a different standard for evaluating community opposition. The July 14, 1995, decision letter provides in pertinent part:

Because of our concerns over detrimental effects on the surrounding community, we are not in a position, on this record, to substitute our judgement for that of local communities directly impacted by this proposed off-reservation gaming acquisition.

Duffy characterized this decision as saying that Congress, in enacting IGRA, did not intend to require communities to show detriment. He felt a community could make a simple claim of unacceptable traffic congestion or crime, for example, and the burden would shift to the applicants and BIA to disprove it. He acknowledged that this would require in some cases that applicants prove the negative, admittedly a difficult burden, but believed this was the balance Congress struck in IGRA.

As set forth in the ultimate decision letter, the test for evaluating tribal opposition reflects a combination of a presumption of economic impact and the distance away from the applicant's reservation. The letter provides in pertinent part:

(continued...)